No. 1072

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In the Supreme Court of the United States

OCTOBER TERM, 1966.

JOSE GUERRERO BELTRAN, RAMONITA C. BELTRAN, and ALVIN C. BELTRAN,

Petitioners,

vs.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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SUPREME COURT OF THE UNITED STATES

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Petitioners, Jose Guerrero Beltran, Ramonita C. Beltran, and Alvin C. Beltran, pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, affirming the decision and order of the Special Inquiry Officer of the Respondent, and denying petition for review of the order of deportation entered by the Immigration and Naturalization Service, Respondent.

JUDGMENT AND OPINION OF THE COURT BELOW

The order of the District Director of the Immigration and Naturalization Service denying further time for voluntary departure is printed in the Appendix "A".

The opinion of the Court of Appeals denying the petition for review has not been officially reported, but it will be found in Appendix "B".

JURISDICTION

The judgment of the Court of Appeals sought to be reviewed was dated and entered on November 8, 1966. A timely petition for rehearing was denied by said court on November 23, 1966. The mandate of the Court of Appeals was stayed for ninety days from the date of the denial of the petition for rehearing pending the filing of a petition in this court for a writ of certiorari.

Jurisdiction of this court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

1. Was the denial by the District Director of the request for additional time to depart voluntarily an abuse of discretion?

STATUTES INVOLVED

The statutes involved are: the Code of Federal Regulations, 8 C.F.R. 244.2, which states:

> "A request by an alien for an extension of time within which to depart voluntarily shall be filed with the district director having jurisdiction over the alien's place of residence. Written notice of the district director's decision shall be served upon the alien, and no appeal may be taken therefrom."

STATEMENT OF THE CASE

The petitioners are natives and citizens of the Philippine Islands. The Petitioner, Ramonita C. Beltran, is a professional nurse who last entered the United States as an

exchange visitor. Petitioner, Jose Guerrero Beltran, is her husband, who entered as the spouse of an exchange visitor, and petitioner, Alvin C. Beltran, is her minor son, who entered as the minor child of an exchange visitor.

On to-wit: April 7, 1966, after a hearing before the Special Inquiry Officer of Respondent, the adult Petitioners were granted voluntary departure at their own expense and thereafter were given until May 7, 1966 to depart from the United States.

On to-wit: May 5, 1966 in writing, the Petitioners requested additional time to leave the United States so that Petitioner, Ramonita C. Beltran, might make arrangements to go to a hospital in Canada, there to be a professional nurse, and the other Petitioners would accompany her.

Since there is a very serious shortage of professional nurses in Canada, Petitioner, Ramonita C. Beltran, will be able to go there but the time required for such processing of applications sometimes takes a number of months and such arrangements are not yet complete for said Petitioners.

Respondent arbitrarily refused to grant sufficient time for such arrangements to be made and ordered the Petitioners to leave the United States on or before May 7, 1966.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

Counsel for the Petitioner is aware of the many decisions holding that as a general rule the courts should

not substitute their discretion for the discretion of the Attorney General.

However, the discretion of the Attorney General is not absolute or dictatorial but can be and has been overruled in cases relating to other sections of the Immigration and Nationality Act which rest upon the discretionary action of the Attorney General.

The petitioner is entitled to have the discretionary action of the Attorney General reviewed to determine if procedural due process has been granted to the alien and if the Attorney General has abused his discretion. See *Cakmar* v. *Hoy*, 265 F. 2nd 59.

In the case of *Acosta* v. *Landon*, 125 F. Supp. 434, it was held that where the alien applied for suspension of deportation under Section 244(a) of the Immigration and Nationality Act, and showed that he had lived in the United States for forty (40) years, and other facts in support of his application, and the Special Inquiry Officer found that his deportation would not result in "exceptional and extremely unusual hardship", there had been an abuse of discretion, and that such discretion was judicially reviewable.

The Petitioners have never been arrested. They are persons of good moral character or they would not have been granted voluntary departure, since this is one of the requirements.

The fact that they overstayed their stay in the United States is conceded. However, there is no great harm to the United States by permitting the Petitioners to stay until the application of Petitioner, Ramonita C. Beltran, to enter Canada is processed and completed. As a matter of fact, her continued stay in the United

States helps benefit the United States, by relieving the grievous shortage of professional nurses in the United States and in the Chicago area. Their departure to the Philippine Islands would be very expensive and would be nonsensical in view of the fact that they would very shortly have to make the long trip back to Canada, when their permission to enter Canada is granted.

The attention of the court is directed to the case of *Matter of F—*, 9 Int. Dec. 333. This was a decision of the Board of Immigration Appeals construing 8 C.F.R. 244.1. This is a section of the Code of Federal Regulations which authorized voluntary departure in lieu of deportation if the alien establishes that he is willing and has "the immediate means with which to depart promptly from the United States".

This decision of the Board of Immigration Appeals, which is a precedent decision, was entered in a case where a crewman who had stayed in the United States more than the period of his "shore leave", was therefore deportable.

He asked for voluntary departure and was denied by the Special Inquiry Officer because it was held that he did not have the present ability to enter some other country.

It was shown that he had an offer of employment from a shipping line sailing out of Trinidad, if he could get to that country. The Record showed that it took several months to obtain a visa for such a crewman to enter Trinidad. The Board reversed the Special Inquiry Officer and stated:

> "It is our conclusion that the regulations regarding voluntary departure must be applied in the light

of the facts of each individual case. We find that the facts here indicate distinct probability that the respondent will be able to effectuate voluntary departure within a reasonable period of time. Here we consider as important the fact that respondent and his counsel are making substantial effort to depart to some country other than Yugoslavia. *We deem it only proper that a sufficient and reasonable time be allotted respondent to conclude his arrangements.*"

It must be observed that the Respondent has failed to accord "a sufficient and reasonable time" to the petitioners to conclude their arrangements.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

NATHAN T. NOTKIN
Attorney for Petitioners.

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11 South LaSalle Street
Chicago, Illinois 60603
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APPENDIX "A"

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
219 South Dearborn Street
Chicago, Illinois 60604

Please Address Reply To
this office

and refer to this file No.
A14 082 393
A14 082 395
A14 054 964

May 12, 1966

Mr. Nathin T. Notkin
Attorney-at-Law
11 South LaSalle Street
Chicago, Illinois 60603

Dear Mr. Notkin:

This will confirm our conversation of May 5, 1966 regarding your request for additional time beyond May 7, 1966 for Mr. Jose Guerrero Beltran, his wife Ramonita and son Alvin.

After careful consideration it was decided that no further extensions would be forthcoming.

Very truly yours,
/s/ L. W. Hurney
L. W. Hurney
District Director

APPENDIX "B"

UNITED STATES COURT OF APPEALS
For The Seventh Circuit
Chicago, Illinois 60604

November 8, 1966

Before
Hon. Win G. Knoch
Hon. Latham Castle
Hon. Walter J. Cummings, Jr.

No. 15688

JOSE GUERRERO BELTRAN, RAMONITA C. BELTRAN and ALVIN C. BELTRAN,

Petitioners,

vs.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order of the Immigration and Naturalization Service under Public Law 87-301.

This Court has considered the record in this matter as transmitted to this Court from the Immigration and Naturalization Service, in addition to the briefs filed by the respective parties herein, and has heard oral argument in open court by counsel for the said parties. Having taken the case under advisement for decision, the Court has conferred thereon, and is now of the opinion, and accordingly holds and adjudges that the decision of the District Director to refuse an extension of time for the petitioners' departure from the United States, herein sought to be reversed, does not represent an abuse of her discretion.

Wherefore, the decision respecting which this petition for review was filed is affirmed and the Clerk of this Court is directed to enter the judgment of this Court accordingly.

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 1072

JOSE GUERRERO BELTRAN, RAMONITA C. BELTRAN, AND ALVIN C. BELTRAN, PETITIONERS

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. B) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on November 8, 1966. A petition for rehearing was denied on November 23, 1966. The petition for a writ

of certiorari was filed on February 17, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the District Director abused his discretion in denying petitioners' application for an extension of time within which to depart voluntarily from the United States.

STATEMENT

Petitioners (wife, husband and child) are citizens of the Phillipine Islands who came to the United States pursuant to the Mutual Educational and Cultural Exchange Act of 1961 (75 Stat. 527, 534-535). The wife is a professional nurse. After a hearing at which it appeared that the family had overstayed the prescribed period of their stay, petitioners were granted the relief they requested—voluntary departure in lieu of deportation from the United States (8 U.S.C. 1254(e)). The terms of the order to depart voluntarily, entered on April 7, 1966, required them to leave the country by May 7, 1966. On May 5, 1966, petitioners requested an indefinite extension of time in which to depart voluntarily so as to allow Mrs. Beltran to make arrangements to enter Canada, where she hopes to practice her profession of nursing. The request was denied by the District Director on May 12 (Pet. App. A). The court of appeals affirmed, finding no abuse of discretion in the administrative action (Pet. App. B).

ARGUMENT

There is no substance to the present petition. The District Director could properly determine in her discretion (8 C.F.R. 244.2) that, in light of petitioners' breach of the terms of their entry and having been granted the privilege of voluntary departure, petitioners would be accorded no more than thirty days in which to depart. In making that determination, the District Director could also consider that there is no guarantee that the wife's application to enter Canada would be granted.[1] We note finally that petitioners' departure has already been long delayed by this litigation.

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[1] Petitioners' citation of *Matter of F—*, 9 I. & N. Dec. 333, is misplaced. That decision construed 8 C.F.R. 244.1, which governs the granting of the privilege of voluntary departure, relief which petitioners obtained in this case.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

FRED M. VINSON, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
ROGER A. PAULEY,
Attorneys.

MARCH 1967

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